



# Beneficial Ownership and Control

## FAQs for Trust Company Service Providers (TCSPs)

### The Changes

The Companies Registry at the Jersey Financial Services Commission (JFSC) is making changes to the way the Companies Registry collects information concerning beneficial ownership and control (BO). From 1 January 2017 onwards, we will require all Corporate and Legal Entities (apart from foundations) to complete a C17S form detailing current beneficial ownership and control by 30 June 2017. Effectively, TCSPs will have six months to comply with this new requirement. On submission of a C17S form and thereafter, all Corporate and Legal Entities (apart from foundations) must notify the Companies Registry of any changes to BO within 21 days of change. In respect of foundations, it is envisaged that this requirement will apply from or about 30 April 2017 (pending legislative amendments). However, TCSPs may voluntarily submit F17S forms any time from 1 January 2017.

**Important: Even if there is no change to BO information since incorporation, you must still complete a C17S (or equivalent form depending on the entity applying) before 30 June 2017. This will allow the Companies Registry to update information relating to BOs of each Corporate and Legal Entity on the BO register. You can do this at any time from 1 January 2017 as long as this is filed by 30 June 2017. Non submission of a C17S is a criminal offence.**

### Next Steps

#### What does this mean for TCSPs (also known as Trust Company Businesses)?

##### From 1 January 2017, all:

1. **New incorporations or registrations** of Corporate and Legal Entities (with the exception of foundations) will be issued with a new Control of Borrowing (Jersey) Order 1958 (COBO) consent requiring such entities to inform the Companies Registry of any changes to BO – such information to be collected in accordance with the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the AML Handbook). The new COBO consent will contain a new additional condition requiring company (or the TCSP contracted to act on behalf of the Company) to notify the Companies Registry within 21 days of change of beneficial ownership.
2. **Existing incorporated or registered** Corporate and Legal Entities administered by TCSPs will have to notify the Companies Registry within 21 days of change to BO (in practice, as the TCSP acts on behalf of the Corporate or Legal Entity, this being 21 days from the date of the TCSP becoming aware of a change of BO). This is because on 1 January 2017, the JFSC will issue a new COBO consent on its website containing additional conditions relating to notification. Copies of the COBO consent applicable to each and every Corporate and Legal Entity (a small

number of Corporate and Legal Entities with more complex existing COBOs, mainly relating to funds, will be issued new COBOs upon review and on a case by case basis) will be sent with the annual return receipts (since this is an existing postal process). The new COBO will replace the existing COBO consent even though you may not have received a copy of the COBO consent. Please be aware that the new COBO consent will be effective from 1 January 2017.

3. **Even if there is no change to BO information since incorporation**, TCSPs must complete a C17S form (or equivalent form depending on the entity) for each and every Corporate and Legal Entity it administers **before 30 June 2017**. This will allow the Companies Registry to refresh and verify information relating to BOs of each and every Corporate and Legal Entity on the BO register. This information should already be held by TCSPs – we are simply requiring that the information already held by the TCSPs (in accordance with the AML Handbook) to be transmitted to the central register at the JFSC.

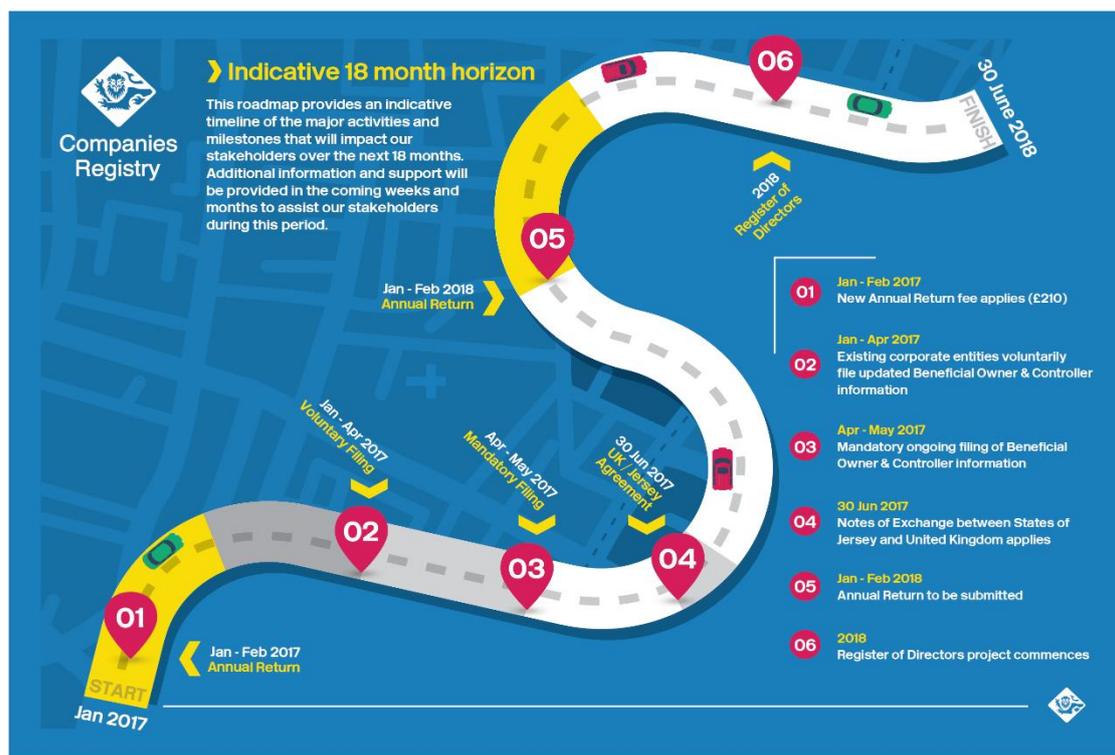
In short there are two new requirements:

- a) Before 30 June 2017 - All TCSPs administering Corporate and/or Legal Entities must refresh and verify information ensuring that up to date information is transmitted to the central register at the JFSC by completing a C17S form (or equivalent depending on the legal entity); and
- b) Once up to date information is submitted in accordance with a) above, all Corporate and Legal Entities will be obliged to notify the Companies Registry within 21 days of knowledge of a change to BO information in such manner as may be specified by the JFSC.

For the avoidance of doubt, the Companies Registry is not collecting a historical chronology of changes since registration.

On or around 30 April 2017, it is also envisaged that the requirement to notify the Companies Registry upon change will also become codified in legislation. Accordingly, all Corporate and Legal Entities will need to keep the Companies Registry notified of any changes to physical persons who own and/or control companies, partnerships and/or foundations registered in Jersey. Ultimately, this means that all TCSPs will be required to review their records to be in a position to provide up to date information in this regard to the Companies Registry by **30 June 2017**. This is because we have made an international commitment to having an up to date and current BO centralised register by 30 June 2017.

In order to assist TCSPs with this burden, the JFSC will introduce a voluntary filing mechanism which is set out in the 18 month horizon below thereby giving TCSPs up to six months to comply with this new policy.



The Companies Registry has prepared some FAQs to assist TCSPs in gathering the necessary information so as to comply with these new changes that have been set by Government policy.

## 1 So, who are beneficial owner and controllers?

The Companies Registry applies the Financial Action Task Force (**FATF**) standards in respect of beneficial ownership and control. To this end, a general threshold of 25% or more may be applied by Corporate and Legal Entities registered in Jersey. However caution is highlighted in this regard – Corporate and Legal Entities must be aware that this is by no means a set threshold. A case by case risk assessment is required. The determination to be made must be in line with the AML Handbook. Therefore, the threshold will depend on the risk assessment conducted. The risk assessment conducted must be on the relationship as a whole. For example, where a TCSP views a 20% beneficial owner is high risk, the TCSP should consider registering the beneficial owner on the central register even though its interest is less than the 25% threshold. This is in line with the TCSPs' role as a first line of defence in respect of the prevention and detection of money laundering and the financing of terrorism. TCSPs should be mindful that the registration of a high risk beneficial owner will facilitate the ability of the JFSC to:

- › Reduce the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
- › Protect and enhance the reputation and integrity of Jersey in commercial and financial matters;
- › Act in best economic interests of Jersey; and
- › Ensure we are countering financial crime both in Jersey and elsewhere.

## 2 What does Corporate and Legal Entity mean?

Corporate and Legal Entities has been interpreted by the States of Jersey, in line with FATF requirements and the AML Handbook, to include:

- › **Companies** registered under the Companies (Jersey) Law 1991 (the **Companies Law**);
- › **Foundations** registered under the Foundations (Jersey) Law 2009 (the **Foundations Law**);
- › **Incorporated Limited Partnerships** registered under the Incorporated Limited Partnerships (Jersey) Law 2011 (the **ILP Law**);
- › **Limited Liability Partnerships** registered under the Limited Liability Partnerships (Jersey) Law 1997 (the **LLP Law**);
- › **Limited Partnerships** registered under the Limited Partnerships (Jersey) Law 1994 (the **LP Law**); and
- › **Separate Limited Partnerships** registered under the Separate Limited Partnerships (Jersey) Law 2011 (the **SLP Law**).

Although Foundations are not currently caught by the COBO regime, legislative amendments will be introduced by the second quarter of 2017 to ensure that BO information is also captured by the Companies Registry for Foundations.

## 3 Why this change in Policy?

With the exception of Foundations, this is not a new requirement - Corporate and Legal Entities registered in Jersey are already issued with a COBO consent on incorporation/registration. The only difference is that we are adding a requirement to notify the Companies Registry of any changes to BO information within 21 days and we are doing this by the issuance of new COBO consent. It is envisaged that this obligation to notify will be replicated in legislative amendments to the Companies Law, the Foundations Law as well as the LP Law, ILP Law, SLP Law and LLP Law.

The drive behind this change is the continuing evolution of the international standards in this area and the Government of Jersey's agreement with the Government of the United Kingdom concerning the exchange of beneficial ownership information of all Corporate and Legal Entities registered. In practice, this agreement enhances an already good working relationship on information exchange with the United Kingdom and other jurisdictions around the world.

This agreement will require the Joint Financial Crimes Unit of the States of Jersey Police and Customs to supply information on adequate, accurate and current beneficial ownership within 1 hour of an urgent request.

The deadline for implementation is 30 June 2017.

Consequently, Jersey is enhancing its regime to ensure that the information held on our central register is as adequate, accurate and current as possible thereby enhancing transparency of all Jersey Corporate and Legal Entities registered. The information collected will be stored on a secure and private register held by the Companies Registry and will only be exchanged on request with law enforcement and tax authorities.

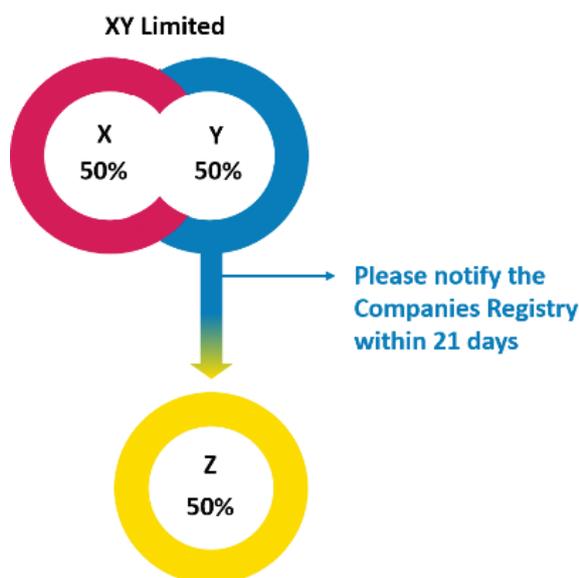
We stress that we are by no means the only jurisdiction that has signed such an agreement with the United Kingdom Government – all Crown Dependencies and Overseas Territories have signed up to equivalent agreements. All these agreements being reciprocal.

## 4 Who is a beneficial owner?

There are a number of interpretations. In Jersey, we follow the FATF interpretation as outlined in section 4 of the AML Handbook.

For example:

XY Ltd is owned 50% by X and 50% by Y on incorporation. XY Ltd is administered by a TCSP.

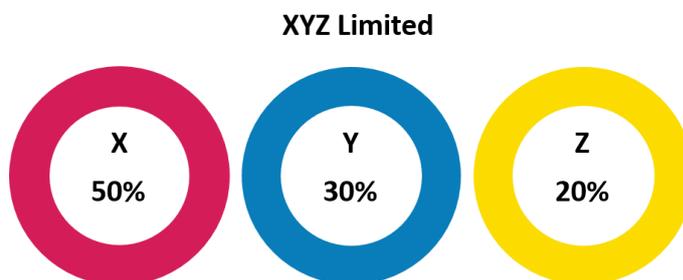


Both X and Y are already registered as BOs on the register since they are the same BOs identified on incorporation. However, if Y wants to sell his ownership to Z, the TCSP will have to notify the Companies Registry within 21 days of change in ownership. It is the company's responsibility to ensure that the details of who owns the company are recorded on the BO register.

However, we are placing our reliance on TCSPs to ensure good governance is maintained and that the Companies Registry is notified since it will be the responsibility of the TCSP, acting on behalf of the company, which will file a C17A form with the Companies Registry. For the avoidance of any doubt, a C17A form is only to be completed if there is a change in beneficial ownership and control after a C17S has been submitted.

When filling in the C17A form (or equivalent form depending on the entity), TCSPs must ensure that any concerns relating to beneficial owners, controllers or indeed business activity (we refer to the Sound Business Practice Policy) is highlighted. The Companies Registry reminds TCSPs that the Companies Registry acts as a second line of defence when fighting against money laundering and financing of terrorism. If there are any such concerns or sensitivities, the Companies Registry reserves the right to place additional conditions on the COBO consents issued.

How about XYZ Ltd which is owned 50% by X, 30% by Y and 20% by Z?



X and Y will need to ensure that their details are recorded on the BO register. Z may also need to be registered on the BO register but this is dependent on the risk assessment conducted by the TCSP.

The Companies Registry continues to rely on TCSPs performing their role as the first line of defence in respect of all matters concerning the prevention and detection of money laundering and the financing of terrorism. TCSPs should be mindful that the registration of a high risk beneficial owner will facilitate the ability of the JFSC to protect and enhance the reputation of our financial services sector.

## 5 Who is a controller?

There are a number of interpretations. In Jersey, we follow the FATF interpretation as outlined in Section 4 of AML Handbook and if relevant the “three tier” approach set out therein. For ease of reference, the “three tier” approach relating to controllers can be located as follows:

### For legal persons:

- › **Companies** – Section 4.5.1 of AML Handbook and if relevant the “three tier” approach set out in paragraph 127.
- › **Foundations** - Section 4.5.3 of the AML Handbook and if relevant the “three tier” approach set out in paragraph 139.
- › **Partnerships** (separate limited partnerships, incorporated limited partnerships and limited liability partnerships) - section 4.5.5 of AML Handbook and if relevant the “three tier” approach set out in paragraph 153.

### For legal arrangements:

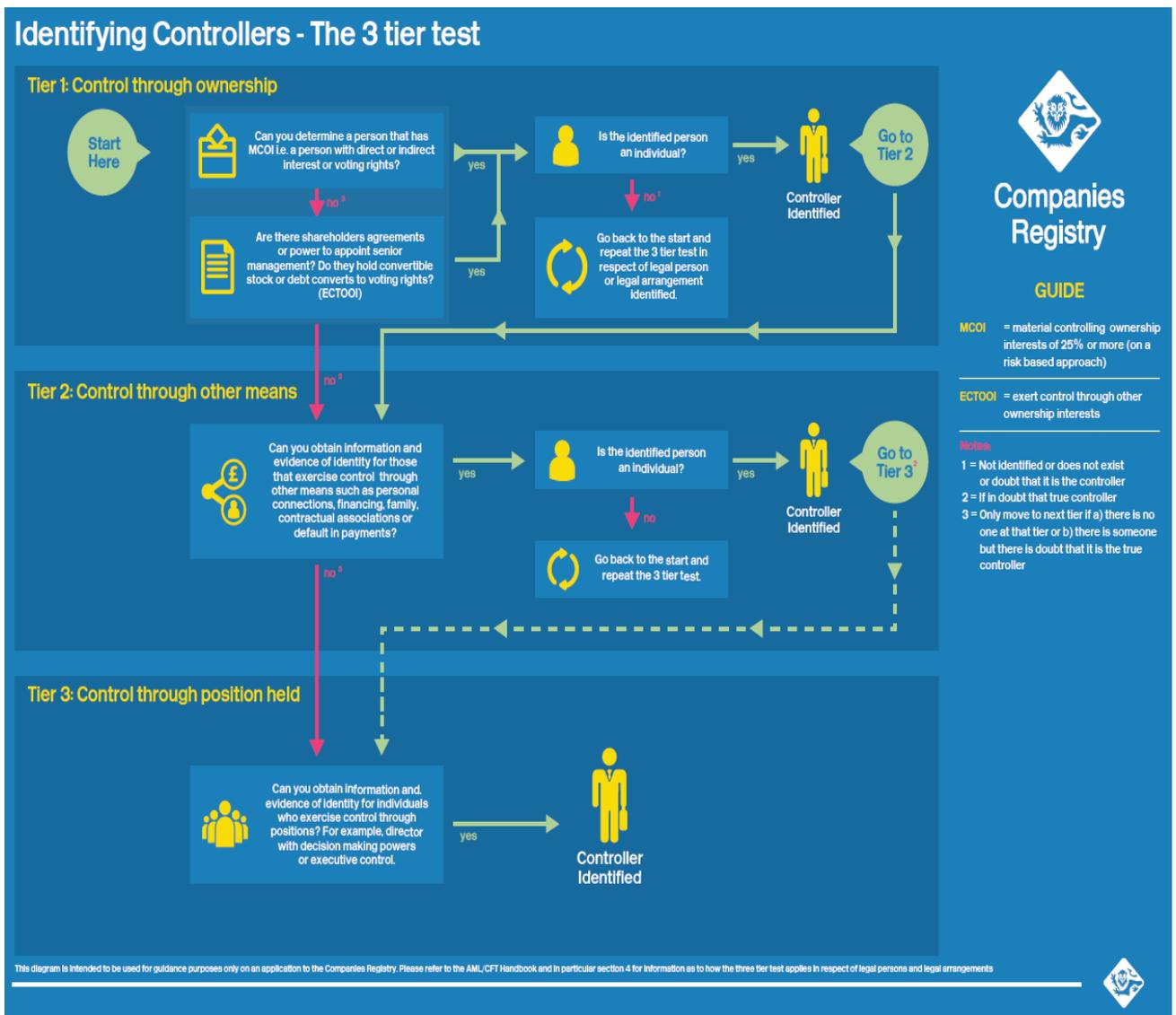
- › **Trusts** - Section 4.4.1 of AML Handbook and if relevant the “three tier” approach set out in paragraph 81.
- › **Limited partnerships** - Section 4.4.3 of AML Handbook and if relevant the “three tier” approach set out in paragraph 90.

For ease of reference, we set out below the three tier test for companies, being:

- › Each individual with a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests or voting rights) or who exerts control of the company through other ownership means.

- › To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the company through other means.
- › Where no individual is otherwise identified under this section, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

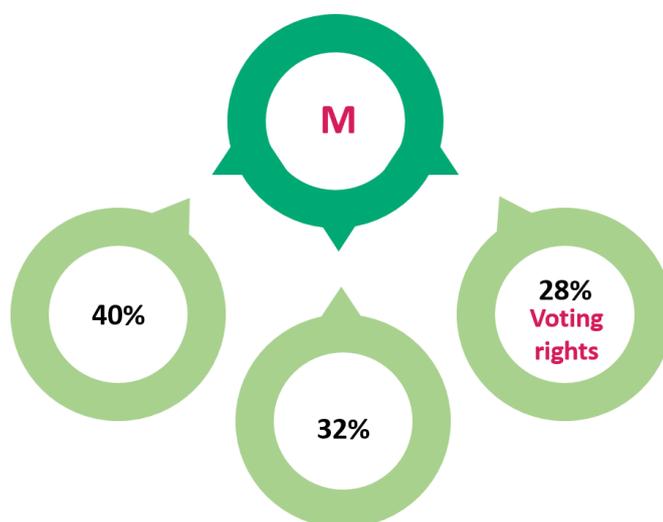
The below diagram is intended to assist you to identify the beneficial owner and controller. This is intended as guidance only and you should refer to the AML/CFT Handbook, section 4 for further information.



## 6 Can different people be beneficial owners and controllers?

Yes - someone else other than a beneficial owner might still have significant influence over a corporate or legal entity. You should ensure to follow the three tier test as outlined in FAQ 5. For example, if someone exerts complete control of removal or appointment of directors. Although they have no shares nor voting rights they are still in control. Accordingly, they will need to be identified as a controller even though they are not a beneficial owner. The company's constitutional documents must be checked in order to assess whether or not someone else might have significant influence.

In the instance below, M has been identified as being such a person, since he has a complete right over the appointment and removal of directors.



Another example of someone else with significant influence can be someone who has an absolute veto over the company business plan. Such a person should also be identified as a controller even though they are not a beneficial owner.

## 7 How do I notify the Companies Registry of current BO information?

From 1 January 2017, all TCSPs will be able to complete a C17S form (or equivalent depending on the entity applying) to provide an update to the BO register. The C17S form (and other equivalent forms) will be available online, forming part of an automated process on the Easy-Company-Register (ECR). If you choose to file your annual return online, you will be directed to fill in a C17S form at the same time.

On submission of a C17S form, all TCSPs will be required to notify the Companies Registry of a change to BO. For the avoidance of any doubt, prior consent will not be required by TCSPs. To notify the Companies registry of a change, please complete a C17A form (or such equivalent depending on the entity applying).

**Note:** Should the Companies Registry have any concerns in respect of a beneficial owner on our register, we will notify the TCSP as soon as possible and as such we reserve the right to issue a bespoke COBO consent and/or make an application to the Royal Court to dissolve the company on grounds of

public interest. TCSPs should also be aware that the Companies Registry shall also contact both the supervision division of the JFSC as well as the enforcement division of the JFSC if there are any concerns relating to a beneficial owners or controllers (or indeed concerns relating to business activity) on our register.

Should you have any doubt about a particular BO, TCSPs should contact a Registry Officer or send an email to [registry@jerseyfsc.org](mailto:registry@jerseyfsc.org) as soon as possible.

## 8 What if I am not sure whether or not the information held on the BO register is correct?

If you are in any doubt about the information currently held on the BO register simply re-submit a C17S form (or equivalent form depending on the entity applying). Unless you are the data subject, we are unable to disclose to you the information currently held on our register.

If there is a dispute to beneficial ownership, we reserve the right to retain the last undisputed entry on our register once on notice, until such time as the dispute is resolved. The Companies Registry will simply maintain the status quo until such time as instructed otherwise by the Royal Court.

We remind all TCSPs as well as Corporate and Legal Entities that the information held on our BO register is received in good faith.

## 9 Is there an Appeal Mechanism?

If you are concerned about the information held by the Companies Registry, you should contact a Registry Officer at the earliest opportunity. Please be informed that under the data protection laws, we are unable to disclose the names of beneficial owners or controllers on our register unless you are the data subject and even in such cases we can only disclose information concerning the data subject only. Note you are also unable to disclose information TCSPs even if the TCSP administers the Corporate or Legal Entity.

As stipulated in FAQ 8, if there is a dispute to beneficial ownership, we reserve the right to retain the last undisputed entry on our register once on notice, until such time as the dispute is resolved. The Companies Registry will simply maintain the status quo until such time as instructed otherwise by the Royal Court.

## 10 Will I be fined if I failed to inform the Companies Registry?

**Remember:** TCSPs, acting on behalf of their clients, must inform us of the current BO of each entity it administers by 30 June 2017 by completing a C17S form (or equivalent depending on the entity). It will be a criminal offence if a Corporate or Legal Entity fails to complete a C17S form by 30 June 2017. Accordingly, action may be taken against the Corporate or Legal Entity for breach of a COBO consent and/or any breach of the following laws (as applicable); Companies Law, Foundations Law, ILP Law, LLP Law, LP Law or SLP Law.